
ENGROSSED HOUSE BILL 3230

State of Washington 60th Legislature 2008 Regular Session

By Representatives Conway, Darneille, and Flannigan

Read first time 01/25/08. Referred to Committee on Local Government.

1 AN ACT Relating to public notification and hearing requirements for
2 permits issued under the shoreline management act; and amending RCW
3 90.58.140.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 90.58.140 and 1995 c 347 s 309 are each amended to
6 read as follows:

7 (1) A development shall not be undertaken on the shorelines of the
8 state unless it is consistent with the policy of this chapter and,
9 after adoption or approval, as appropriate, the applicable guidelines,
10 rules, or master program.

11 (2) A substantial development shall not be undertaken on shorelines
12 of the state without first obtaining a permit from the government
13 entity having administrative jurisdiction under this chapter.

14 A permit shall be granted:

15 (a) From June 1, 1971, until such time as an applicable master
16 program has become effective, only when the development proposed is
17 consistent with: (i) The policy of RCW 90.58.020; and (ii) after their
18 adoption, the guidelines and rules of the department; and (iii) so far
19 as can be ascertained, the master program being developed for the area;

1 (b) After adoption or approval, as appropriate, by the department
2 of an applicable master program, only when the development proposed is
3 consistent with the applicable master program and this chapter.

4 (3) The local government shall establish a program, consistent with
5 rules adopted by the department, for the administration and enforcement
6 of the permit system provided in this section. The administration of
7 the system so established shall be performed exclusively by the local
8 government.

9 (4) Except as otherwise specifically provided in subsection (11) of
10 this section, the local government shall require notification of the
11 public of all applications for permits governed by any permit system
12 established pursuant to subsection (3) of this section by ensuring that
13 notice of the application is given by (~~at least one of~~) the following
14 methods:

15 (a) Mailing of the notice to the latest recorded real property
16 owners as shown by the records of the county assessor within at least
17 three hundred feet of the boundary of the property upon which the
18 substantial development is proposed. If the proposal is for the
19 construction or alteration of a facility that performs or is likely to
20 perform any of the following actions for large marine vessels, the
21 local government must, within five days, mail notice of the proposal to
22 the latest recorded real property owners as shown by the records of the
23 county assessor within at least one thousand feet of the boundary of
24 the property upon which the substantial development is proposed:
25 Construction, refurbishment, maintenance, repair, lay berthing, or
26 demolition. For purposes of this section, large marine vessels are
27 marine vessels that are seventy-five feet or more in length;

28 (b) Posting of the notice in a conspicuous manner on the property
29 upon which the project is to be constructed; (~~or~~) and

30 (c) Any other manner deemed appropriate by local authorities to
31 accomplish the objectives of reasonable notice to adjacent landowners
32 and the public.

33 The notices shall include a statement that any person desiring to
34 submit written comments concerning an application, or desiring to
35 receive notification of the final decision concerning an application as
36 expeditiously as possible after the issuance of the decision, may
37 submit the comments or requests for decisions to the local government
38 within thirty days of the last date the notice is to be published

1 pursuant to this subsection. The local government shall forward, in a
2 timely manner following the issuance of a decision, a copy of the
3 decision to each person who submits a request for the decision.

4 If the permit application is for the construction or alteration of
5 a facility that performs or is likely to perform any of the following
6 actions for large marine vessels, the local government must, at least
7 thirty days before determining that the application is complete, hold
8 a public hearing on the application: Construction, refurbishment,
9 maintenance, repair, lay berthing, or demolition.

10 If a hearing is to be held on an application, notices of such a
11 hearing shall include a statement that any person may submit oral or
12 written comments on an application at the hearing.

13 (5) The system shall include provisions to assure that construction
14 pursuant to a permit will not begin or be authorized until twenty-one
15 days from the date the permit decision was filed as provided in
16 subsection (6) of this section; or until all review proceedings are
17 terminated if the proceedings were initiated within twenty-one days
18 from the date of filing as defined in subsection (6) of this section
19 except as follows:

20 (a) In the case of any permit issued to the state of Washington,
21 department of transportation, for the construction and modification of
22 SR 90 (I-90) on or adjacent to Lake Washington, the construction may
23 begin after thirty days from the date of filing, and the permits are
24 valid until December 31, 1995;

25 (b) Construction may be commenced no sooner than thirty days after
26 the date of the appeal of the board's decision is filed if a permit is
27 granted by the local government and (i) the granting of the permit is
28 appealed to the shorelines hearings board within twenty-one days of the
29 date of filing, (ii) the hearings board approves the granting of the
30 permit by the local government or approves a portion of the substantial
31 development for which the local government issued the permit, and (iii)
32 an appeal for judicial review of the hearings board decision is filed
33 pursuant to chapter 34.05 RCW. The appellant may request, within ten
34 days of the filing of the appeal with the court, a hearing before the
35 court to determine whether construction pursuant to the permit approved
36 by the hearings board or to a revised permit issued pursuant to the
37 order of the hearings board should not commence. If, at the conclusion
38 of the hearing, the court finds that construction pursuant to such a

1 permit would involve a significant, irreversible damaging of the
2 environment, the court shall prohibit the permittee from commencing the
3 construction pursuant to the approved or revised permit until all
4 review proceedings are final. Construction pursuant to a permit
5 revised at the direction of the hearings board may begin only on that
6 portion of the substantial development for which the local government
7 had originally issued the permit, and construction pursuant to such a
8 revised permit on other portions of the substantial development may not
9 begin until after all review proceedings are terminated. In such a
10 hearing before the court, the burden of proving whether the
11 construction may involve significant irreversible damage to the
12 environment and demonstrating whether such construction would or would
13 not be appropriate is on the appellant;

14 (c) If the permit is for a substantial development meeting the
15 requirements of subsection (11) of this section, construction pursuant
16 to that permit may not begin or be authorized until twenty-one days
17 from the date the permit decision was filed as provided in subsection
18 (6) of this section.

19 If a permittee begins construction pursuant to subsections (a),
20 (b), or (c) of this subsection, the construction is begun at the
21 permittee's own risk. If, as a result of judicial review, the courts
22 order the removal of any portion of the construction or the restoration
23 of any portion of the environment involved or require the alteration of
24 any portion of a substantial development constructed pursuant to a
25 permit, the permittee is barred from recovering damages or costs
26 involved in adhering to such requirements from the local government
27 that granted the permit, the hearings board, or any appellant or
28 intervener.

29 (6) Any decision on an application for a permit under the authority
30 of this section, whether it is an approval or a denial, shall,
31 concurrently with the transmittal of the ruling to the applicant, be
32 filed with the department and the attorney general. With regard to a
33 permit other than a permit governed by subsection (10) of this section,
34 "date of filing" as used herein means the date of actual receipt by the
35 department. With regard to a permit for a variance or a conditional
36 use, "date of filing" means the date a decision of the department
37 rendered on the permit pursuant to subsection (10) of this section is

1 transmitted by the department to the local government. The department
2 shall notify in writing the local government and the applicant of the
3 date of filing.

4 (7) Applicants for permits under this section have the burden of
5 proving that a proposed substantial development is consistent with the
6 criteria that must be met before a permit is granted. In any review of
7 the granting or denial of an application for a permit as provided in
8 RCW 90.58.180 (1) and (2), the person requesting the review has the
9 burden of proof.

10 (8) Any permit may, after a hearing with adequate notice to the
11 permittee and the public, be rescinded by the issuing authority upon
12 the finding that a permittee has not complied with conditions of a
13 permit. If the department is of the opinion that noncompliance exists,
14 the department shall provide written notice to the local government and
15 the permittee. If the department is of the opinion that the
16 noncompliance continues to exist thirty days after the date of the
17 notice, and the local government has taken no action to rescind the
18 permit, the department may petition the hearings board for a rescission
19 of the permit upon written notice of the petition to the local
20 government and the permittee if the request by the department is made
21 to the hearings board within fifteen days of the termination of the
22 thirty-day notice to the local government.

23 (9) The holder of a certification from the governor pursuant to
24 chapter 80.50 RCW shall not be required to obtain a permit under this
25 section.

26 (10) Any permit for a variance or a conditional use by local
27 government under approved master programs must be submitted to the
28 department for its approval or disapproval.

29 (11)(a) An application for a substantial development permit for a
30 limited utility extension or for the construction of a bulkhead or
31 other measures to protect a single family residence and its appurtenant
32 structures from shoreline erosion shall be subject to the following
33 procedures:

34 (i) The public comment period under subsection (4) of this section
35 shall be twenty days. The notice provided under subsection (4) of this
36 section shall state the manner in which the public may obtain a copy of
37 the local government decision on the application no later than two days
38 following its issuance;

1 (ii) The local government shall issue its decision to grant or deny
2 the permit within twenty-one days of the last day of the comment period
3 specified in (i) of this subsection; and

4 (iii) If there is an appeal of the decision to grant or deny the
5 permit to the local government legislative authority, the appeal shall
6 be finally determined by the legislative authority within thirty days.

7 (b) For purposes of this section, a limited utility extension means
8 the extension of a utility service that:

9 (i) Is categorically exempt under chapter 43.21C RCW for one or
10 more of the following: Natural gas, electricity, telephone, water, or
11 sewer;

12 (ii) Will serve an existing use in compliance with this chapter;
13 and

14 (iii) Will not extend more than twenty-five hundred linear feet
15 within the shorelines of the state.

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